

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CAPITOL RECORDS, INC., A DELAWARE CORPORATION; VIRGIN RECORDS AMERICA, INC., A CALIFORNIA CORPORATION; MOTOWN RECORD COMPANY, L.P., A CALIFORNIA LIMITED PARTNERSHIP; ARISTA RECORDS LLC, A DELAWARE LIMITED LIABILITY COMPANY; AND SONY BMG MUSIC ENTERTAINMENT, A DELAWARE GENERAL PARTNERSHIP,  
Plaintiffs,  
v.  
DOROTHY SCHMIDT,  
Defendant.

No. C-06-5433 SC  
DEFAULT JUDGMENT

**I. INTRODUCTION**

Plaintiffs Capitol Records, Inc., Virgin Records America, Inc., Motown Record Company, L.P., Arista Records LLC, and Sony BMG Music Entertainment ("Plaintiffs" or "Record Companies") brought this action against Defendant Dorothy Schmidt ("Defendant" or "Schmidt"). Plaintiffs assert that Schmidt infringed their copyrights in multiple sound recordings by allegedly using an online media distribution system to download, distribute, and/or

1 make available for distribution Plaintiffs' copyrighted sound  
2 recordings. Defendant was properly served with the Summons and  
3 Complaint on September 18, 2006, but failed to respond. Docket  
4 No. 7. On November 14, 2006, the Clerk entered default against  
5 Defendant. Docket No. 10. On December 26, 2006, Defendant was  
6 properly served with the Summons and Amended Complaint. Docket  
7 No. 14. The Defendant again failed to respond, and the Clerk  
8 entered default against the Defendant on February 9, 2007. Docket  
9 No. 18.

10 Now before the Court is Plaintiffs' Motion for Default  
11 Judgment. For the reasons stated herein, the Court GRANTS  
12 Plaintiff Default Judgment and AWARDS Plaintiffs \$6,000.00 in  
13 damages, and costs in the amount of \$420.00. The Court further  
14 ENJOINS Defendant from directly or indirectly infringing  
15 Plaintiffs' rights under federal or state law in any sound  
16 recording, whether now in existence or later created, that is  
17 owned or controlled by Plaintiffs, or to which Plaintiffs are  
18 licensees of exclusive rights under United States copyright,  
19 including without limitation, by using the Internet or any online  
20 media distribution system to reproduce any such recording, to  
21 distribute any such recording, or to make any such recording  
22 available for distribution to the public, except pursuant to a  
23 lawful license or with the express authority of Plaintiffs.  
24 Defendant shall destroy any copies of any sound recordings which  
25 Plaintiffs own or to which Plaintiffs are licensees of exclusive  
26 rights, that Defendant has downloaded onto any computer hard drive  
27 or server without Plaintiffs' authorization, and all copies of  
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such downloaded sound recordings.

## II. BACKGROUND

Plaintiffs are the copyright owners or licensees of exclusive rights under copyright with respect to certain copyrighted sound recordings, identified in Exhibits A and B to the Amended Complaint. ("Copyrighted Recordings"). Am. Compl., ¶ 11; Kerr Decl., Ex. 1. As such, Plaintiffs hold the exclusive rights to reproduce and distribute the Copyrighted Recordings. Am. Compl., ¶ 12. Pursuant to 17 U.S.C. § 401, Plaintiffs have placed proper notices of copyright on the album cover of each of the Copyrighted Recordings. Id., ¶ 14.

Plaintiffs allege that, without their permission, Defendant has used and continues to use an online media distribution system to download the Copyrighted Recordings, to distribute the Copyrighted Recordings, and to make the Copyrighted Recordings available for distribution to others. Id., ¶ 13. Plaintiffs seek the minimum statutory damages for the alleged infringement of each of the eight identified Copyrighted Recordings, totaling \$6,000.00, pursuant to 17 U.S.C. § 504(c) . Id., ¶ 16; Pl.'s Mot. for Default J. at 2. Additionally, pursuant to 17 U.S.C. § 505, Plaintiffs seek to recover \$420.00 in costs. Pl.'s Mot. for Default J. at 2; Kerr. Decl. ¶ 21. Finally, Plaintiffs seek a permanent injunction pursuant to 17 U.S.C. §§ 502 and 503. See Am. Compl., ¶ 17; Pl.'s Mot. for Default J. at 2.

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### 1 III. LEGAL STANDARD

2 After entry of default, the Court may enter a default  
3 judgment. Fed. R. Civ. P. 55(b)(2). Its decision whether to do  
4 so, while "discretionary," Aldabe v. Aldabe, 616 F.2d 1089, 1092  
5 (9th Cir. 1980), is guided by several factors.

6 As a preliminary matter, the Court must "assess the adequacy  
7 of the service of process on the party against whom default is  
8 requested." Bd. of Trs. of the N. Cal. Sheet Metal Workers v.  
9 Peters, No. C-00-0395 VRW, 2000 U.S. Dist. LEXIS 19065, at \*2  
10 (N.D. Cal. Jan. 2, 2001).

11 If the Court determines that service was sufficient, it may  
12 consider the following factors in its decision on the merits of a  
13 motion for default judgment:

14 (1) the possibility of prejudice to the plaintiff, (2)  
15 the merits of plaintiff's substantive claim, (3) the  
16 sufficiency of the complaint, (4) the sum of money at  
17 stake in the action; (5) the possibility of a dispute  
18 concerning material facts; (6) whether the default was  
19 due to excusable neglect, and (7) the strong policy  
20 underlying the Federal Rules of Civil Procedure favoring  
21 decisions on the merits.

22 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). "The  
23 general rule of law is that upon default the factual allegations  
24 of the complaint, except those relating to the amount of damages,  
25 will be taken as true. Geddes v. United. Fin. Group, 559 F.2d  
26 557, 560 (9th Cir. 1977). Therefore, for the purposes of this  
27 Motion, the Court accepts as true the facts as portrayed in the  
28 Amended Complaint.

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1 **IV. DISCUSSION**

2 **A. Service of Process**

3 Service of process against Defendant was adequate. Federal  
4 Rule of Civil Procedure 4(e) allows service upon an individual by  
5 personally delivering to the individual the summons and complaint.  
6 Fed. R. Civ. P. 4(e)(2). On September 18, 2006, copies of the  
7 Complaint, the Summons, and other related documents were  
8 personally delivered to Ms. Schmidt. See Docket. No. 7. On  
9 December 26, 2006, copies of the Amended Complaint and the Summons  
10 were personally delivered to Ms. Schmidt. See Docket No. 14.

11 **B. Merits of Motion**

12 Accepting the allegations in the Complaint as true, as it  
13 must, the Court finds that Eitel factors favor default judgment.

14 **1. Prejudice**

15 Plaintiffs would be prejudiced absent entry of default  
16 judgment. If Defendant is allowed to continue downloading or  
17 distributing Plaintiffs' Copyrighted Recordings, Plaintiffs will  
18 suffer irreparable harm from copyright infringement. See Am.  
19 Compl., ¶ 17. Without the entry of a default judgment, Plaintiffs  
20 would not have another remedy for these harms. Such a situation  
21 qualifies as prejudice. See PepsiCo, Inc. v. Cal. Sec. Cans, 238  
22 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).

23 **2. Merits of Plaintiffs' Substantive Claim for**  
24 **Copyright Infringement**

25 The Record Companies' claim for infringement of copyrights is  
26 meritorious. To prevail on a claim for copyright infringement,  
27 Plaintiffs must establish ownership of a valid copyright and  
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1 unauthorized copying of original elements of the protected work by  
2 Defendant. See Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499  
3 U.S. 340, 361 (1991). As alleged in the Amended Complaint,  
4 Plaintiffs are "the copyright owners or licensees of exclusive  
5 rights under United States copyright with respect to the  
6 Copyrighted Recordings." Am. Compl., ¶ 11. Section 501(b) of the  
7 Copyright Act allows the owners of a legal or beneficial interest  
8 in a copyright to sue for infringement. 17 U.S.C. § 501(b).  
9 Therefore, Plaintiffs satisfy the first element of Feist.

10 Plaintiffs identify multiple violations of their rights,  
11 satisfying the second element of Feist. Defendant has violated  
12 the Record Companies' exclusive right to reproduce the Copyrighted  
13 Recordings by downloading electronic copies of the Copyrighted  
14 Recordings to her computer without permission. Am. Compl., ¶ 13.  
15 Defendant has violated the Record Companies' exclusive right to  
16 distribute the Copyrighted Recordings by using an online media  
17 distribution system to distribute the Copyrighted Recordings to  
18 the public. Id. Section 106 of the Copyright Act enumerates the  
19 exclusive rights of the copyright owner, including the right to  
20 reproduce the copyrighted work in copies or phonorecords, and the  
21 right to distribute copies or phonorecords of the work to the  
22 public by sale or other transfer of ownership, or by rental,  
23 lease, or lending. See 17 U.S.C. § 106. Anyone who violates  
24 these exclusive rights infringes the copyright. See 17 U.S.C §  
25 501(a).

### 26 3. Sufficiency of the Complaint

27 Plaintiffs properly allege the necessary elements for a claim  
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1 of copyright infringement. The Amended Complaint identifies the  
2 copyrighted works in dispute, identifies Plaintiffs as owners of  
3 legal or beneficial interests in the exclusive rights to those  
4 copyrighted works, and describes how Defendant is violating those  
5 exclusive rights. See Am. Compl., ¶¶ 11-15. Accordingly,  
6 Plaintiffs' Amended Complaint is sufficient.

7           4.       Amount of Money at Stake

8           The sum of money at stake favors the Record Companies.  
9 Including costs, the Record Companies seek a total of \$6,420.00.  
10 Pl.'s Mot. for Default J. at 2. While Defendant would suffer from  
11 entry of judgment in this amount against her, these damages are  
12 authorized by statute. See 17 U.S.C. § 504(c). For each of the  
13 eight specific Copyrighted Recordings Plaintiffs identify, the  
14 statute authorizes damages ranging from \$750.00 to \$30,000.00.  
15 Id. Plaintiffs also allege that Defendant's infringement was  
16 willful, which would raise the maximum recovery available to  
17 \$150,000.00 for each infringed work. See id.; Am. Compl., ¶ 15.  
18 Finally, although the statute authorizes an award of attorney's  
19 fees, Plaintiffs have limited their request to costs. See 17  
20 U.S.C. § 505; Pl.'s Mot. for Default J. at 4-5. Because the  
21 Record Companies are seeking only the minimum authorized award of  
22 damages and their actual costs, the Court finds that this factor  
23 weighs in favor of default judgment.

24           5.       Possibility of a Dispute Concerning Material Facts

25           There is little possibility of a dispute concerning material  
26 facts. The Record Companies have demonstrated that they have  
27 exclusive rights in the Copyrighted Recordings. Kerr Decl., ¶ 5;  
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1 Am. Compl., ¶ 11. Further, the Record Companies have provided  
2 adequate evidence of Defendant's unauthorized copying and  
3 distribution of the Copyrighted Recordings. See Kerr Decl., ¶¶ 2-  
4 8, Exh. 1. Therefore, this factor also favors default judgment.

5 6. Whether Default Was Due to Excusable Neglect

6 Defendant's failure to act here is not a case of excusable  
7 neglect. Prior to bringing suit, Plaintiffs contacted Defendant  
8 and attempted to resolve this matter out of Court. Kerr Decl., ¶¶  
9 8-9. When that failed, Plaintiffs filed suit on September 5,  
10 2006. Defendant was personally served with the Summons and  
11 Complaint on September 18, 2006, but did not respond. See Docket  
12 No. 7; Kerr Decl., ¶¶ 10-11. Before the Clerk entered default  
13 against Defendant, Plaintiffs again contacted her and urged her to  
14 respond to the Complaint. Kerr Decl., Ex. 2. The entire cycle  
15 was repeated when Plaintiffs served the Amended Complaint and  
16 Defendant again failed to respond. Kerr Decl., ¶¶ 14-16. In  
17 fact, Plaintiffs even served Defendant with notice of the instant  
18 Motion, although such notice was not necessary. See Pl.'s Mot.  
19 for Default J. at 14 n.4; Fed. R. Civ. P. 55(b)(2). Plaintiffs  
20 have made every reasonable effort to engage defendant in this  
21 process with no success. Because Defendant's failure to  
22 participate in this litigation cannot be considered excusable  
23 neglect, this factor favors entry of default judgment.

24 7. Strong Policy Favoring Decision on the Merits

25 While it is preferable to decide cases on the merits whenever  
26 possible, this preference is not dispositive. Where a party fails  
27 to defend against a complaint, as Defendant has failed here, Rule  
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55 authorizes the Court to enter default judgment. Kloepping v. Fireman's Fund, No. C 94-2684 TEH, 1996 U.S. Dist. LEXIS 1786, at \*10 (N.D. Cal. Feb. 14, 1996).

In light of all of the Eitel factors discussed above, the Court finds that entry of default judgment is appropriate.

**C. Remedy**

Plaintiffs request monetary damages, costs, and equitable relief in the form of a permanent injunction.

**1. Damages**

The Record Companies seek \$6,000.00 in statutory damages. Pursuant to section 504(a) of the Copyright Act, an infringer is liable for either the plaintiff's actual damages or statutory damages. See 17 U.S.C. § 504(a). A plaintiff seeking statutory damages may recover between \$750.00 and \$30,000.00 for all infringements of a copyrighted work. 17 U.S.C. § 504(c). Where a plaintiff chooses to recover statutory damages, he need not prove actual damages. See Columbia Pictures Indus., Inc. v. Krypton Broad. of Birmingham, Inc., 259 F.3d 1186, 1194 (9th Cir. 1997)(citation omitted). When awarding statutory damages, the Court has broad discretion within the range provided by statute. Id. Here, Plaintiffs have proven that Defendant infringed the eight identified Copyrighted Recordings. Accordingly, the Defendant is liable for \$750.00 in damages for each of the eight infringed Copyrighted Recordings, for a total of \$6,000.00.

**2. Costs**

Plaintiffs also seek to recover their costs, \$350.00 in filing fees and \$70.00 for service of process, for a total of

1 \$420.00. See Pl's Mot. for Default J. at 13; Kerr Decl., ¶ 21.  
2 By statute, the Court may award a prevailing copyright owner  
3 costs, including reasonable attorneys' fees. See 17 U.S.C. § 505.  
4 Here, the Plaintiffs seek only to recover their costs, not  
5 attorneys' fees. Having successfully proven infringement,  
6 Plaintiffs are entitled to recover \$420.00 in costs.

7 3. Injunctive Relief

8 Plaintiffs have demonstrated that their exclusive rights in  
9 the Copyrighted Recordings have been, and continue to be, violated  
10 by the Defendant. In such circumstances, the Court is authorized  
11 to issue a permanent injunction to prevent or restrain further  
12 infringements. See 17 U.S.C. § 502(a); Sega Enters. Ltd. v.  
13 MAPHIA, 948 F. Supp. 923, 940 (N.D. Cal. 1996) ("Generally, a  
14 showing of copyright infringement liability and the threat of  
15 future violations is sufficient to warrant a permanent  
16 injunction.") Injunctive relief is available in copyright actions  
17 resulting in default judgment. See e.g., Jackson v. Sturkie, 255  
18 F. Supp. 2d 1096, 1103 (N.D. Cal. 2003) ("[D]efendant's lack of  
19 participation in this litigation has given the court no assurance  
20 that defendant's infringing activity will cease. Therefore,  
21 plaintiff is entitled to permanent injunctive relief.")

22 Plaintiffs are entitled to a broad injunction, not limited to  
23 the identified Copyrighted Recordings. In addition to the  
24 Copyrighted Recordings, the injunction shall extend to all sound  
25 recordings owned by the Record Companies or to which the Record  
26 Companies are the licensees of exclusive rights. See e.g., Picker  
27 Int'l Corp. v. Imaging Equip. Serv., Inc., 931 F. Supp. 18, 45 (D.

1 Mass. 1995), aff'd sub nom Picker Int'l, Inc. v. Leavitt, 94 F.3d  
2 640 (1st Cir. 1996). Furthermore, the injunction shall prohibit  
3 Defendant from infringing any rights in any sound recordings which  
4 Plaintiffs may acquire in the future. See Sony Music Entm't, Inc.  
5 v. Elias, No. CV 03-6387, 2004 U.S. Dist. LEXIS 30385, at \*13-14  
6 (C.D. Cal. Jan. 20, 2004) (enjoining infringement of existing and  
7 future works).

8  
9 **V. CONCLUSION**

10 For the foregoing reasons, the Court GRANTS Plaintiffs  
11 Default Judgment. The Court hereby AWARDS Plaintiffs \$6,000.00 in  
12 damages and \$420.00 in costs. The Court also GRANTS Plaintiffs'  
13 request for a permanent injunction.

14 Defendant shall be and hereby is ENJOINED from directly or  
15 indirectly infringing Plaintiffs' rights under federal or state  
16 law in any sound recording, whether now in existence or later  
17 created, that is owned or controlled by Plaintiffs, or to which  
18 Plaintiffs are licensees of exclusive rights under United States  
19 copyright, including without limitation, by using the Internet or  
20 any online media distribution system to reproduce any such  
21 recording, to distribute any such recording, or to make any such  
22 recording available for distribution to the public, except  
23 pursuant to a lawful license or with the express authority of  
24 Plaintiffs. Defendant shall destroy any copies of any sound  
25 recordings which Plaintiffs own or to which Plaintiffs are  
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1 licensees of exclusive rights, that Defendant has downloaded onto  
2 any computer hard drive or server without Plaintiffs'  
3 authorization, and all copies of such downloaded sound recordings.  
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5  
6 IT IS SO ORDERED.

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8 Dated: June 6, 2007



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10 UNITED STATES DISTRICT JUDGE